

**Letter of Findings Number: 04-20110148P
Negligence Penalty
For the Year 2008**

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ISSUE

I. Tax Administration – Negligence Penalty.

Authority: IC § 6-8.1-10-2.1; [45 IAC 15-11-2](#).

Taxpayer protests the imposition of the ten percent negligence penalty.

STATEMENT OF FACTS

Taxpayer provides hauling services for its parent. The Indiana Department of Revenue ("Department") conducted a sales and use tax audit of Taxpayer for the year 2008. The Department's audit assessed additional use tax, penalty, and interest. Taxpayer paid the base tax assessment as well as the interest, but protests the imposition of penalty. This Letter of Findings is written based on Taxpayer's protest letter and information in Taxpayer's file. Additional facts will be provided as necessary.

I. Tax Administration – Negligence Penalty.

DISCUSSION

Taxpayer protests the imposition of the negligence penalty assessed on additional use tax the Department found Taxpayer owed pursuant to an audit by the Department.

Penalty waiver is permitted if the taxpayer shows that the failure to pay the full amount of the tax was due to reasonable cause and not due to willful neglect. IC § 6-8.1-10-2.1. The Indiana Administrative Code, [45 IAC 15-11-2](#) further provides:

(b) "Negligence" on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

(c) The department shall waive the negligence penalty imposed under [IC 6-8.1-10-1](#) if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section. Factors which may be considered in determining reasonable cause include, but are not limited to:

- (1) the nature of the tax involved;
- (2) judicial precedents set by Indiana courts;
- (3) judicial precedents established in jurisdictions outside Indiana;
- (4) published department instructions, information bulletins, letters of findings, rulings, letters of advice, etc.;
- (5) previous audits or letters of findings concerning the issue and taxpayer involved in the penalty assessment.

Reasonable cause is a fact sensitive question and thus will be dealt with according to the particular facts and circumstances of each case.

Taxpayer states that "it had no intent to disregard, nor willfully neglect, the laws of the State of Indiana regarding its sales and use tax obligations." Taxpayer also indicated that during the progress of the audit it implemented internal controls to "ensure proper payment of sales tax on future purchases." Taxpayer also pointed to the fact it has not been penalized for non-payment of tax in prior years, nor has it previously requested waiver of taxes.

Taxpayer must demonstrate that it had reasonable cause for not paying the full amount of sales or use tax due. In order to establish reasonable cause, Taxpayer must demonstrate that it exercised "ordinary business care and prudence" in conducting the duties from which the additional tax and penalty arose. [45 IAC 15-11-2\(c\)](#).

Taxpayer is a large corporation, with access to counsel, that is aware of the sales tax law and regulations that govern its transactions. Apart from its bare assertion, Taxpayer has not demonstrated that it had reasonable cause for not paying sales tax on the items it purchased. Taxpayer, therefore, does not qualify for waiver of the negligence penalty.

FINDING

Taxpayer's protest is respectfully denied.

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